

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SIXTH REGION**

THE DISNEY STORE, INC.1/

Employer

and

Case No.26-RC-8060

HIGHWAY AND LOCAL MOTOR FREIGHT
EMPLOYEES LOCAL 667
A/W IBT, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:2/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and will effectuate the purposes of the Act to assert jurisdiction herein.3/
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:4/

Included: All full-time and regular part-time employees, in the following departments: tilt tray, put to store, less than case, receiving shipping, stock movement, inventory control, inbound processing, outbound processing, quality assurance, security/currency cage, returns, and housekeeping, employed at the Employer's Memphis, TN facility.

Excluded: All office clerical employees, coordinators, professional employees, guards, maintenance employees, inbound control employees, and supervisors as defined in the Act.

I shall permit Barbara Everett, Kathy Mickens, Felicia Lee, and Quinton Brown to vote by challenge ballot.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the **Highway and Local Motor Freight Employees Local 667**.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision two (2) copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director. No extension of time to file this list shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. **North Macon Health Care Facility**, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office (Region 26), 1407 Union Avenue, Suite 800, Memphis, TN 38104-3627 on or before February 12, 1999.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W. Washington, D.C. 20570-0001. This request must be received by the Board in Washington by February 19, 1999.

Dated this 5th day of February 1999, at Memphis, Tennessee.

/s/ Gerard P. Fleischut

Regional Director, Region 26

1/ The correct name of the Employer is The Disney Store, Inc.

2/ The parties filed timely briefs which have been duly considered.

3/ The parties stipulated that The Disney Store, Inc., hereinafter referred to as the Employer is a California corporation with a place of business in Memphis, Tennessee where it is engaged in the wholesale distribution of Disney apparel and memorabilia. During the past 12 month period, a representative period, the Employer purchased and received products valued in excess of \$50,000 directly from outside the State of Tennessee and during the same representative period, it sold and shipped products valued in excess of \$50,000 directly to customers located outside the State of Tennessee.

4/ The Petitioner seeks to represent all full-time and regular part-time employees, including team leaders, in the following departments: tilt tray, put to store, less than case, receiving, shipping, stock movement, inventory control, inbound processing, outbound processing, quality assurance, security/currency cage, returns, and housekeeping, excluding all office clerical employees, coordinators, professional employees, guards, maintenance employees, inbound control employees, and supervisors as defined in the Act. The Employer agrees the above is an appropriate unit except for team leaders who it asserts are statutory supervisors.

The parties stipulated the following individuals exercised supervisory authority and are supervisors within the meaning of Section 2(11) of the Act:

Andrew Eisner
Patrick Julian

Administrative Manager
Tilt tray supervisor

Lois Bowman
Theodore Coleman
Don Seymour

Stock movement supervisor
Receiving supervisor
Inbound Manager

The parties stipulated the following employees are coordinators and excluded from the Unit: Joel Flores, Shanna Jennings, Art Zielinski, Daryl Bailey, and Martha Risby.

The parties also stipulated the following employees are maintenance and excluded from the Unit: Pamela Moore, Annie Saulsberry, Gerry Buchanan, Mark Dietzman, Rodney McDonald, Timothy Staples, and Steven Williams.

The parties also stipulated the following employees are located in inbound control and as such excluded from the Unit: Deloris Bishop, Cynthia Collins-Booker, Tracy Duncan, Patricia Gipson, Doristine Hicks-Carter, Patricia Jones, Patricia McClinton, Ioma McVay, and Linda Williams.

The parties also stipulated the employees listed on Employer Exhibit 9, which is attached, are casual employees and as such excluded from the Unit.

There are approximately 15 team leaders employed by the Employer and in dispute in the case *sub judice*. They are: Fay Williams, Sherry Shields, Deloris Boyd, Tommy Lyles, Jessie Griffin, Carolyn Marshall, James Williams, Shirley Taylor, John Ward, Sally Heath-Christopher, Gregory Watson, Charlotte Cherry, Kathy Mickens, Barbara Everett, and Felicia Lee. Additionally, Quinton Brown is a team leader/coordinator who the Employer urges for inclusion in the Unit while the Petitioner urges for exclusion from the Unit.

The team leaders are salaried non-exempt which means they receive a salary each week although it varies depending upon overtime hours and tardiness or absenteeism. Specifically, the team leaders are eligible for overtime as well as being docked for tardiness or absenteeism. Coordinators are also salaried non-exempt while supervisors are salaried exempt and unit employees are hourly paid. The team leaders and coordinators keep time sheets where they record their hours while unit employees punch a time clock and supervisors do not use either system. The fringe benefits are approximately the same for the unit employees, team leaders, and supervisors - medical insurance, sick leave, and store discounts. The differences are that unit employees have to accrue sick leave while team leaders and supervisors receive 48 hours each year; team leaders and supervisors are eligible to participate in the 401(k) program while unit employees are not; unit employees receive 75% tuition reimbursement while team leaders and supervisors receive 100% reimbursement; and supervisors receive greater passes to Disney theme parks than team leaders or unit employees.

In the appraisal process, team leaders initially fill out self-assessments in the same manner as supervisors while unit employees do not do so. Team leaders do not attend regular management meetings although they did attend some training meetings which were also attended by supervisors as well as “key contact” employees which are unit positions. Team leaders have a 30-minute lunch period which coincides with the department employees’ lunch period while supervisors do not have a predetermined lunch period. Team leaders and supervisors wear a blue-colored badge while unit employees wear a yellow colored badge.

Employees’ wage rates vary from \$6.85/hour to \$11.50/hour while team leaders’ wage rates, after being converted from salary, are between \$10.87/hour and \$16.87/hour. The coordinators’ wage rates are identical to that of the team leaders. “Key contacts” receive an additional .50/hour more than their normal wage rate. Team leaders as well as coordinators, supervisors, and higher management are eligible to receive merit money based upon performance while employees are not eligible for this program.

Team leaders do not discipline employees although they give “verbal coachings” which means a team leader will speak to an employee about doing a better job. It is not a step in the employer’s disciplinary procedure. Team leaders and “key contacts” train employees.

Most employees perform the same type of jobs on a daily basis but team leaders do have the authority to move employees from job to job based upon the work load and any absenteeism problems but it has no effect on the employees’ wages. Furthermore, this is of a routine nature and does not require the use of independent judgment.

There was specific testimony relating to the team leaders in tilt tray, receiving, stock movement, currency/security cage, returns, shipping, and inbound processing. Thus, I will review the team leaders in these departments on a separate basis.

In the tilt tray department, there are three team leaders - Fay Williams, Sherry Shields and Deloris Boyd. The record evidence establishes and I find that these team leaders evaluate both regular and casual employees by providing their opinions of these employees to their supervisor who follows their opinions about 90% of the time. These evaluations have a direct impact on employees. Specifically, for the regular employees, it affects the level of their wage increase and for casual employees, it affects their ability to remain employed by the Employer.

At one point in 1998, these team leaders signed leave forms approving such leave but this was during a period that a supervisor was not in the department and this practice ceased toward the end of this several month period.

Thus, this authority for a few months in 1998 is not a basis to establish supervisory status in 1999.

The receiving department employs two team leaders, Tommy Lyles and Jessie Griffin. The evidence established these team leaders also provide their opinions on the evaluations of the department employees, both regular and casual, and it is usually followed by the supervisor. Lyles and Griffin have effectively recommended the lay-off of certain casual employees and have effectively terminated temporary employees, who are employed from a temporary service.

In the stock movement department, there are three team leaders, Carolyn Marshall, James Williams, and Shirley Taylor. These team leaders have evaluated regular and casual employees in the same manner as above and these evaluations have been followed most of the time. Furthermore, they have effectively terminated temporary employees.

The below-named team leaders in the below-named departments evaluate regular and casual employees by providing their opinions to their supervisors and these opinions are followed most of the time. These evaluations have the same impact on regular and casual employees as described above.

John Word	Currency/Security Cage
Sally Heath-Christopher	Returns
Gregory Watson	Shipping
Charlotte Cherry	Inbound Processing

As the above facts demonstrate, all of 12 team leaders verbally evaluate regular and casual employees to their immediate supervisor, who follows their evaluations on a consistent basis. The evaluations of regular employees occur every 6 months and impact the amount of wage increase for regular employees while the evaluations of casual employees occur at 3 month intervals and impact their continued employment. Thus, I find the exercise of this authority to effectively evaluate employees, which impacts their wage increase and job status, establishes the following team leaders as statutory supervisors: Fay Williams, Sherry Shields, Deloris Boyd, Tommy Lyles, Jessie Griffin, Carolyn Marshall, James Wilkins, Shirley Taylor, John Word, Sally Heath-Christopher, Gregory Watson, and Charlotte Cherry. **See Harbor City Volunteer Ambulance Squad**, 318 NLRB 764 (1995), where the Board found the assistant supervisors as statutory supervisors based upon their exercise of the authority to evaluate employees along with their supervisors. Additionally, I find the record established Lyles, Griffin, Marshall, Williams, and Taylor exercised the authority to effectively terminate temporary employees which establishes supervisory status under Section 2(11) of the Act. The fact that the temporary employees are non-unit employees is not controlling on a finding of the supervisory status of the team leaders. **Detroit College of Business**, 296 NLRB 318, 321 (1989).

The employer did not present any specific evidence on the authority and duties of the following team leaders: Kathy Mickens - "less than case" department, Barbara Everett - "outbound processing" and Felicia Lee - "input to store". The parties did not agree all team leaders had the same authority. Based upon the lack of specific evidence in the record concerning these 3 team leaders, I cannot find them to be statutory supervisors. But, based upon the fact that they are in the same positions as the other team leaders which I have found as statutory supervisors and some evidence that all are viewed as the same by the Employer, I shall permit Barbara Everett, Kathy Mickens, and Felicia Lee to vote by challenge ballot. If their votes will affect the outcome of the election, then a subsequent investigation and/or hearing will be ordered.

The final remaining issue concerns Quinton Brown whose job title is "yard management coordinator team lead." The record establishes her job is to inform the truck drivers from outside companies where to "slot" the trailers and move the trailers, if necessary. Brown is not over any employees; rather, she "deals" with the inbound manager and team leaders. Thus, I find she is not a supervisor within the meaning of Section 2(11) of the Act. But, the evidence is insufficient to find if she has a community of interest with the Unit employees. Thus, I shall permit Quinton Brown to vote by challenged ballot and her status will be investigated in the same manner as stated above for the 3 team leaders, if necessary.

Overall, there are approximately 175 employees in the bargaining unit.

